

governed by Medicare (Title XVIII) Principles of Reimbursement, and Chapter 10, HCFA-PUB.15-1 (1993). Providers shall identify such related organizations and costs in their cost reports.

- G. Costs which are otherwise allowable shall be limited by the following provisions:
1. The Owner-Administrator and Owner-Assistant Administrator compensation shall be limited to reasonable levels determined in accordance with HCFA-PUB.15-1 (1993) or determined by surveyed ranges of compensation conducted by AHCA. The survey shall be of all administrators and assistant administrators of Florida long-term care facilities, and shall, to the extent feasible with the survey data collected, recognize differences in organization, size, experience, length of service, services administered, and other distinguishing characteristics. Results of surveys and salary limitations shall be furnished to providers when the survey results are completed, and survey results shall be updated each year by the wage and salary component of the plan's inflation index. A new salary survey shall be conducted every 3 years.
 2. Limitation of rents:
 - a. For the purposes of this provision, allowable ownership costs of leased property shall be defined as:
 - (1) Cost of depreciable assets, property taxes on personal and real property, and property insurance;
 - (2) Sales tax on lease payments except in cases of related parties; and
 - (3) Return on equity that would be paid to the owner if he were the provider, as per Section J. below.
 - b. Lease costs allowed for lease contracts existing as of August 31, 1984 shall remain unchanged except for increases specified in the

contract entered into by the lessee and lessor before September 1, 1984. If, prior to October 1, 1985, the lessee exercises an option to renew the lease that existed as of August 31, 1984, increases in lease cost for each year of the renewal period shall be limited to the increase in the Florida Construction Cost Inflation Index (See Appendix B), used for property cost ceiling calculations in Section V., during the last 12 months. Lease cost increases shall be further limited to a maximum of 20 percent over 5 years. When the lease contract in effect on September 30, 1985 expires, including only options to renew which were exercised prior to October 1, 1985, reimbursement for lease costs and other property costs shall be based on a fair rental value system (FRVS) for the facility per Section V.E.1.a.-g. of this plan.

- c. (1) For facilities that were not leased as of August 31, 1984 and that are operating under a lease agreement commencing on or after September 1, 1984 and before October 1, 1985, the Medicaid rent reimbursement shall be based on the lesser of actual rent paid or the allowable ownership costs of the leased property per Section III.G.3.-5.
- (2) Annual increases in lease costs for providers in (1) above shall be limited to the increase in the Florida Construction Cost Inflation Index, used for property cost ceiling calculations in Section V, during the last 12 months. Lease cost increases shall be further limited to a maximum of 20 percent over 5 years. When the lease contract in effect on September 30, 1985 expires, including only options to renew which were exercised prior to October 1, 1985,

reimbursement for lease costs and other property costs shall be based on a fair rental value system (FRVS) for the facility per Section V.E.1.a.-g. of this plan.

- d. (1) Facilities leased on or after October 1, 1985 shall be reimbursed for lease costs and other property costs based on the FRVS per Section V.E.1.a.-g. of this plan. Allowable ownership costs shall be documented to AHCA for purposes of computing the fair rental value. Facilities not reimbursed based on the FRVS per Section V.E.1.a.- g. of this plan shall not be reimbursed based on the FRVS per Section V.E.1.a.- g. of this plan, solely due to the execution of a lease agreement between related organizations under Section III.F. of this plan.
- (2) In no case shall Medicaid reimburse property costs of a provider who is subject to b., c., and d.(1) above and e. below if ownership costs are not properly documented per the provisions of this plan. Providers shall not be reimbursed for property costs if proper documentation, capable of being verified by an auditor, of the owner's costs is not submitted to AHCA. The owner shall be required to sign a letter to AHCA which states that the documentation submitted presents to the best of his knowledge true and correct information. The letter signed by the owner shall also state that the owner agrees to make his books and records of original entry related to the nursing home properties available to auditors or official representatives of AHCA.

Long Term Care Version XVII

- (3) Approval shall not be given for a proof of financial ability for a provider if the provider is leasing the facility and does not submit the documentation of the owner's costs with the letter signed by the owner as per (2) above.
 - e. A lease agreement may be assigned and transferred (assumed) for Medicaid reimbursement purposes if all of the following criteria are met:
 - (1) The lease agreement was executed prior to September 1, 1984 (when the "limitations of rents" provisions were implemented).
 - (2) The lease cost is allowable for Medicaid reimbursement purposes.
 - (3) The lease agreement includes provisions which allow for the assignment.
 - (4) All provisions (terms, payment rates, etc.) of the lease agreement remained unchanged (only the lessee changes).
- When the assumed lease contract in effect on September 30, 1985, expires, including only options to renew which were exercised prior to October 1, 1985, reimbursement for lease costs and other property costs shall be based on a FRVS for the facility per Section V.E.1.a.-g. of this plan.
- 3. Basis for depreciation and calculation:
 - a. Cost.

Historical cost of long-term care facilities shall be the basis for calculating depreciation as an allowable cost, except as provided by 3b. and 6. below. All provisions of the Medicare (Title XVIII)

Principles of Reimbursement and HCFA-PUB.15-1 (1993)

regarding asset cost finding shall be followed.

- b. Change in ownership of depreciable assets. For purposes of this plan, a change in ownership of assets occurs when unrelated parties: purchase the depreciable assets of the facility; or purchase 100 percent of the stock of the facility and within 1 year merge the purchased facility into an existing corporate structure or liquidate the purchased corporation and create a new corporation to operate as the provider. In a case in which a change in ownership of a provider's or the lessor's depreciable assets occurs, and if a bona fide sale is established, the basis for depreciation shall be the lower of:

- 1) The fair market value of the depreciable facility as defined by 42 CFR 413.134 (1998~~7~~) and determined by an appraiser who meets the requirements of Section 59A-4.103 (6) (I) 9. b. Florida Administrative Code;
- 2) The allowable acquisition cost of the assets to the owner of record on July 18, 1984, for facilities operating on that date, or the first owner of record for facilities that begin operation after July 18, 1984; or
- 3) The acquisition cost of such assets to the new owner.

Example 1: An owner, who is the owner of record on July 18, 1984, has a facility with a historical depreciable basis of \$500,000.00. A new owner purchases the facility for \$1,000,000.00. The new owner's basis for depreciation is the lesser of the two, or \$500,000.00.

Long Term Care Version XVII

Example 2: An owner, who is the owner of record on July 18, 1984, has a facility with a historical depreciable basis of \$500,000.00. A new owner purchases the facility for \$300,000.00. The new owner's basis for depreciation is the lesser of the two, or \$300,000.00.

4. Limitation on interest expense for property-related debt and on return on equity or use allowance. At a change of ownership on or after July 18, 1984, the interest cost and return on equity or use allowance to the new owner shall be limited by the allowable basis for depreciation as defined per 3.b. above. The new owner shall be allowed the lesser of actual costs or interest cost and return on equity cost or use allowance in amounts that would have occurred based on the allowable depreciable basis of the assets. These limited amounts shall be determined as follows:
 - a. The portion of the equity balance that represents the owner's investment in the capital assets shall be limited for purposes of calculating a return on equity or use allowance to the total amount allowed as depreciable basis for those assets as per 3.b. above.
 - b. The amount of interest cost due to debt financing of the capital assets shall be limited to the amount calculated on the remainder of the allowable depreciable basis after reducing that allowable basis by the amount allowed for equity in a. above. The new owner's

Long Term Care Version XVII

The basis for depreciation to the new owner is \$600,000.00, and the disallowed portion of the depreciable basis is \$400,000.00. Therefore, the allowable equity attributable to investment in the capital assets is \$200,000.00, and interest cost allowed shall be

months' participation in the Medicaid program subsequent to the date the additional beds were put into service. To determine the amount of gain associated with additional beds, the portion of the sale price associated with all depreciable assets shall be allocated to the older and new portions of a facility as follows: For each part of the facility, determine the proportion of beds to the facility's total number of beds. Multiply the proportion of beds in that part of the facility by the sales price. The result is the portion of the sales price allocable to that part of the facility.

Example:

Sale Price: \$6,000,000

Older Portion of facility:

Number of beds = 60

Newer portion of facility:

Number of beds = 120

Allocation to older portion: $(60/180) \times 6,000,000 = \$2,000,000$

Allocation to new portion: $(120/180) \times 6,000,000 = \$4,000,000$

Sale Price \$6,000,000

- (b) The adjusted gross recapture amounts as determined in (a) above shall be allocated for fiscal periods from January 1, 1972, through the earlier of the date of sale, or the implementation of payments based on the FRVS for the facility. The adjusted gross recapture amounts shall be allocated to each fiscal period in the same ratio as depreciation amounts claimed for the respective portions of the facility. Allowable costs shall be computed for each period after depreciation recapture. The recomputed allowable costs shall be

used to determine if there should be an adjustment to the payment rate, and any resulting overpayment shall be recovered.

- (c) The net recapture overpayment amount, if any, so determined in (b) above shall be paid by the former owners to the State. If the net recapture amount is not paid by the former owner, in total or part, the amount not paid shall be deducted from the future payments by AHCA to the buyer until net recapture has been received. AHCA shall grant terms of extended payment when the facts and circumstances of the unrecovered recapture from the seller justify the extension.
- 2. Depreciation recapture resulting from leasing facility or withdrawing from Medicaid program. In cases where an owner-operator withdraws from the Medicaid program as the provider, but does not sell the facility, the depreciation paid by Medicaid to the owner during the time he was the Medicaid provider shall be subject to the depreciation recapture provisions of this plan when the owner sells the facility. This includes cases where an owner-provider leases a facility to another unrelated, licensed operator after having operated the facility as a licensed Medicaid provider. After April 1, 1983, all owner-providers that withdraw from the Medicaid program shall be required to sign a contract with the Agency creating an equitable lien on the owner's nursing home assets. This lien shall be filed by the Agency with the clerk of the Circuit Court in the Judicial Circuit within which the nursing home is located. The contract shall specify the method for computing depreciation recapture, in accordance with the provisions of this plan, and the contract shall state that such recapture so determined shall be due to the Agency upon sale of the facility. In the event that an owner-provider withdraws from the Medicaid program, the

reduction in the gross depreciation recapture amount calculated in Section III. H.1.(a) above shall be computed using only the number of consecutive months that the facility is used to serve Medicaid recipients. EXAMPLE: An owner-operator participates in Medicaid for 60 months. He then withdraws from the Medicaid program and leases the facility to a new operator, who enters the Medicaid program as a new provider and participates for 24 months. At the end of the 24 months, the lessee withdraws from the Medicaid program and operates the facility for another 5 years, after which the owner sells the facility. The gross recapture amount owed by the owner shall be computed using the amount of depreciation claimed by the owner and allowed by Medicaid during the 60 months that he was the provider. The reduction in the gross recapture amount will be $(60+24 - 48)$ months times 1.00 percent. If a provider fails to sign and return the contract to the Agency, the new license for the prospective operator of the facility shall not be approved.

- I. Recapture of property cost indexing above the FRVS base paid under the fair rental value method.
 1. Reimbursement due to indexing paid under the FRVS shall be defined as the accumulated reimbursement paid due to the difference between the FRVS rates paid and the initial FRVS rate established for the facility.
 2. Upon sale of assets recapture of reimbursement due to indexing under FRVS shall be determined as follows:
 - (a) The total amount of indexing shall be recaptured if the facility is sold during the first 60 months that the facility has been reimbursed under FRVS;
 - (b) For months 61 and subsequent, 1 percent of the recapture amount shall be forgiven per month. Two percent of the recapture amount

Long Term Care Version XVII

shall be forgiven per month if the facility had Medicaid utilization greater than 55 percent for a majority of the months that the facility was reimbursed under FRVS; and

3. Documented costs of replacement equipment purchased subsequent to FRVS payments and for which additional payments were not made per Section V.E.1.j. shall reduce dollar-for-dollar the amount of recapture, but shall not create a credit balance due to the provider.

J. Return on Equity.

A reasonable return on equity (ROE) for capital invested and used in providing patient care, excluding positive net working capital (an amount greater than zero), shall be defined for purposes of this plan as an allowable cost. This return on equity shall use the principles stated in Chapter 12, HCFA-PUB.15-1 (1993) except that the rate of return shall be equal to the average of the rates of interest on special issues of public debt obligations issued to the Federal Hospital Insurance Trust Fund for each of the months during the provider's reporting period or portion thereof covered under the Medicaid Program. ROE shall be limited to those providers who are organized and operated with the expectation of earning a profit for the owners, as distinguished from providers organized and operated on a non-profit basis. For facilities being reimbursed under FRVS for property, positive equity in capital assets shall be removed from the owners' equity balance in computing ROE. A full return on equity payment shall be calculated on 20 percent of the FRVS asset valuation per Section V.E. 1.e. of this plan and included in the FRVS rate.

K. Use Allowance.

A use allowance on equity capital invested and used in providing patient care, excluding positive net working capital (an amount greater than zero), shall be defined for purposes of the plan as an allowable cost. The use allowance shall be